In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1463

MICHAEL S. ROSS, PETITIONER

v.

UNITED STATES ATTORNEY'S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner brought an action in the nature of mandamus, under 28 U.S.C. 1361, to compel respondent to prosecute a medical doctor for allegedly making false statements about petitioner's military and medical histories in a medical report prepared by the doctor and made part of petitioner's naval record. The district court dismissed the complaint for failure to state a claim upon which relief could be granted (Pet. App. 47-48), and the court of appeals affirmed *per curiam* (Pet. App. 45).

The decision of the court of appeals is correct and no issue warranting further review is presented. It is well settled that mandamus does not lie to compel a United States Attorney to institute criminal proceedings.

Inmates of Attica Correctional Facility v. *Rockefeller*, 477 F.2d 375 (C.A. 2); *Peek* v. *Mitchell*, 419 F.2d 575 (C.A. 6); *Powell* v. *Katzenbach*, 359 F.2d 234 (C.A.D.C.), certiorari denied, 384 U.S. 906; *United States* v. *Cox*, 342 F.2d 167 (C.A. 5) (*en banc*), certiorari denied *sub nom. Cox* v. *Hauberg*, 381 U.S. 935. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JULY 1975.